

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Tremayne Carroll aka Tremaine Carroll
H-73384,

Plaintiff,

v.
State of California; All RJD Mental
Health Doctors; CDCR Mental Health ,

Defendants.

Case No.: 3:15-cv-01722-LAB-WVG

ORDER:

**1) GRANTING PLAINTIFF'S
MOTION TO PROCEED IN FORMA
PAUPERIS PURSUANT TO 28 U.S.C.
§ 1915(a) (ECF No. 3)**

AND

**2) DISMISSING COMPLAINT FOR
FAILING TO STATE A CLAIM
UPON WHICH RELIEF MAY BE
GRANTED AND FOR SEEKING
MONETARY DAMAGES AGAINST
IMMUNE DEFENDANTS**

Tremayne Carroll aka Tremaine Carroll ("Plaintiff"), currently incarcerated at Richard J. Donovan Correctional Facility ("RJD") located in San Diego, California, and proceeding pro se, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF No. 1).

1 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a);
 2 instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28
 3 U.S.C. § 1915(a) (**ECF No. 3**).

4 **II. Plaintiff’s Motion to Proceed IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the
 6 United States, except an application for writ of habeas corpus, must pay a filing fee of
 7 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
 8 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. §
 9 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if a prisoner, like Plaintiff, is
 11 granted leave to proceed IFP, he remains obligated to pay the entire fee in “increments,”
 12 *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his
 13 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*,
 14 281 F.3d 844, 847 (9th Cir. 2002).

15 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act
 16 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the
 17 trust fund account statement (or institutional equivalent) for the prisoner for the six-
 18 month period immediately preceding the filing of the complaint.” 28 U.S.C. §
 19 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
 20 trust account statement, the Court assesses an initial payment of 20% of (a) the average
 21 monthly deposits in the account for the past six months, or (b) the average monthly
 22 balance in the account for the past six months, whichever is greater, unless the prisoner
 23 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution

25
 26 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay
 27 an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,
 District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee
 is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 having custody of the prisoner then collects subsequent payments, assessed at 20% of the
 2 preceding month's income, in any month in which the prisoner's account exceeds \$10,
 3 and forwards those payments to the Court until the entire filing fee is paid. See 28 U.S.C.
 4 § 1915(b)(2).

5 In support of his IFP Motion, Plaintiff has now submitted a certified copy of his
 6 trust account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2.
 7 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account statement,
 8 but it shows that he has a current available balance of zero. *See* 28 U.S.C. § 1915(b)(4)
 9 (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil action
 10 or appealing a civil action or criminal judgment for the reason that the prisoner has no
 11 assets and no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at
 12 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of
 13 a prisoner's IFP case based solely on a “failure to pay . . . due to the lack of funds
 14 available to him when payment is ordered.”).

15 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (**ECF No. 3**) and
 16 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350
 17 balance of the filing fees mandated will be collected by the California Department of
 18 Corrections and Rehabilitation (“CDCR”) and forwarded to the Clerk of the Court
 19 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

20 **III. Initial Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

21 Notwithstanding Plaintiff's IFP status or the payment of any partial filing fees, the
 22 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP
 23 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]
 24 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
 25 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
 26 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under
 27 these statutes, the Court must *sua sponte* dismiss complaints, or any portions thereof,

1 which are frivolous, malicious, fail to state a claim, or which seek damages from
 2 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*
 3 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*
 4 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

5 All complaints must contain “a short and plain statement of the claim showing that
 6 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are
 7 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
 8 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
 9 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
 10 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
 11 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
 12 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
 13 *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

14 “When there are well-pleaded factual allegations, a court should assume their
 15 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
 16 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
 17 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
 18 allegations of material fact and must construe those facts in the light most favorable to
 19 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that §
 20 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

21 However, while the court “ha[s] an obligation where the petitioner is pro se,
 22 particularly in civil rights cases, to construe the pleadings liberally and to afford the
 23 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
 24 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
 25 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
 26 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

27 // /

1 **A. State of California – Eleventh Amendment**

2 As an initial matter, the Court finds that to the extent Plaintiff names the State of
 3 California and the California Department of Corrections and Rehabilitation (“CDCR”)
 4 Mental Health Department as Defendants, his claims must be dismissed *sua sponte*
 5 pursuant to both 28 U.S.C. § 1915(e)(2) and § 1915A(b) for failing to state a claim and
 6 for seeking damages against a defendant who is immune. The State of California and the
 7 State of California’s correctional agency, sub-division, or department under its
 8 jurisdiction, are not “persons” subject to suit under § 1983. *Hale v. State of Arizona*, 993
 9 F.2d 1387, 1398-99 (9th Cir. 1993) (holding that a state department of corrections is an
 10 arm of the state, and thus, not a “person” within the meaning of § 1983). And if by
 11 naming the CDCR Mental Health Department as a party, Plaintiff really seeks to sue the
 12 State of California itself, his claims are clearly barred by the Eleventh Amendment. *See*
 13 *Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam) (“There can be no doubt . . .
 14 that [a] suit against the State and its Board of Corrections is barred by the Eleventh
 15 Amendment, unless [the State] has consented to the filing of such a suit.”).

16 Therefore, to the extent Plaintiff seeks monetary damages² against the CDCR,
 17 CDCR Mental Health Department, or any relief against the State of California itself, his
 18 Complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), (iii) and 28 U.S.C.
 19 § 1915A(b)(1) & (2).

20 **B. Personal causation**

21 Plaintiff fails to identify any specific individual in his Complaint. Plaintiff must
 22 allege facts which describe how, or to what extent, an individual was actually aware of or
 23 took part in any constitutional violation. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550
 24 U.S. at 557). “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff
 25

26 ² Plaintiff does not identify any sort of relief that he is seeking in this action. It is not clear whether he
 27 is seeking monetary damages or remedies in the form of injunctive relief.

1 must plead that each government-official defendant, through the official's own individual
 2 actions, has violated the Constitution." *Id.* at 676; *see also Jones v. Community*
 3 *Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even
 4 pro se plaintiff must "allege with at least me degree of particularity overt acts which
 5 defendants engaged in" in order to state a claim).

6 Thus, for this reason alone, the Court finds Plaintiff's Complaint sets forth no facts
 7 which might be liberally construed to support any sort of individualized constitutional
 8 claim against any defendant. "Causation is, of course, a required element of a § 1983
 9 claim." *Estate of Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). "The
 10 inquiry into causation must be individualized and focus on the duties and responsibilities
 11 of each individual defendant whose acts or omissions are alleged to have caused a
 12 constitutional deprivation." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing
 13 *Rizzo*, 423 U.S. at 370-71). Accordingly, Plaintiff's Complaint requires dismissal on this
 14 basis pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). *See Lopez*, 203 F.3d at 1126-
 15 27; *Rhodes*, 621 F.3d at 1004.

16 **D. Inadequate Medical Care Claims**

17 Even if Plaintiff had alleged facts sufficient to connect an individual defendant to
 18 any suffered injury, he has still failed to state a plausible Eighth Amendment claim. Only
 19 "deliberate indifference to serious medical needs of prisoners constitutes the unnecessary
 20 and wanton infliction of pain . . . proscribed by the Eighth Amendment." *Estelle v.*
 21 *Gamble*, 429 U.S. 97, 103, 104 (1976) (citation and internal quotation marks omitted). "A
 22 determination of 'deliberate indifference' involves an examination of two elements: (1)
 23 the seriousness of the prisoner's medical need and (2) the nature of the defendant's
 24 response to that need." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1991),
 25 *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997)
 26 (en banc) (quoting *Estelle*, 429 U.S. at 104).

27 / / /

1 First, “[b]ecause society does not expect that prisoners will have unqualified access
 2 to health care, deliberate indifference to medical needs amounts to an Eighth Amendment
 3 violation only if those needs are ‘serious.’” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992),
 4 citing *Estelle*, 429 U.S. at 103-104. “A ‘serious’ medical need exists if the failure to treat
 5 a prisoner’s condition could result in further significant injury or the ‘unnecessary and
 6 wanton infliction of pain.’” *McGuckin*, 914 F.2d at 1059 (quoting *Estelle*, 429 U.S. at
 7 104). “The existence of an injury that a reasonable doctor or patient would find important
 8 and worthy of comment or treatment; the presence of a medical condition that
 9 significantly affects an individual’s daily activities; or the existence of chronic and
 10 substantial pain are examples of indications that a prisoner has a ‘serious’ need for
 11 medical treatment.” *Id.*, citing *Wood v. Housewright*, 900 F.2d 1332, 1337-41 (9th Cir.
 12 1990); *Hunt v. Dental Dept.*, 865 F.2d 198, 200-01 (9th Cir. 1989).

13 Even assuming Plaintiff’s medical needs are sufficiently serious, his Complaint
 14 fails to include any further “factual content” to show that any Defendant acted with
 15 “deliberate indifference” to his needs. *McGuckin*, 914 F.2d at 1060; *see also Jett v.*
 16 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *Iqbal*, 556 U.S. at 678. Specifically,
 17 Plaintiff alleges that he has been given unspecified medication that have caused him to
 18 “become borderline diabetic,” as well as causing “weight gain, back trouble, blurry
 19 vision, pain/suffering, stress, depression.” (Compl. at 3.)

20 Plaintiff’s Complaint lacks the “further factual enhancement” which demonstrates
 21 any Defendant’s “purposeful act or failure to respond to [his] pain or possible medical
 22 need,” and any “harm caused by [this] indifference.” *Iqbal*, 556 U.S. at 678 (citing
 23 *Twombly*, 550 U.S. at 557); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012)
 24 (citing *Jett*, 439 F.3d at 1096). “A difference of opinion between a physician and the
 25 prisoner—or between medical professionals—concerning what medical care is appropriate
 26 does not amount to deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th
 27 Cir. 2012) (citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989)); *Wilhelm*, 680 F.3d

1 at 1122-23. Instead, Plaintiff must plead facts sufficient to “show that the course of
 2 treatment the doctor[] chose was medically unacceptable under the circumstances and
 3 that the defendant[] chose this course in conscious disregard of an excessive risk to [his]
 4 health.” *Snow*, 681 F.3d at 988 (citation and internal quotations omitted).

5 Plaintiff’s Complaint, however, contains no facts sufficient to show that any
 6 specific individual acted with deliberate indifference to his plight by “knowing of and
 7 disregarding an[y] excessive risk to his health and safety.” *Farmer v. Brennan*, 511 U.S.
 8 825, 837 (1994). “Deliberate indifference is a high legal standard,” and claims of medical
 9 malpractice or negligence are insufficient to establish a constitutional deprivation.
 10 *Simmons v. Navajo Cnty.*, 609 F.3d 1011, 1019 (9th Cir. 2010) (citing *Toguchi*, 391 F.3d
 11 at 1060).

12 Accordingly, the Court finds that Plaintiff’s Complaint also fails to state an Eighth
 13 Amendment inadequate medical care claim, and that therefore, it is subject to *sua sponte*
 14 dismissal in its entirety pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). *See*
 15 *Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004. Because Plaintiff is proceeding
 16 without counsel, however, and the Court has now provided him “notice of the
 17 deficiencies in his complaint,” it will also grant Plaintiff an opportunity to amend it. *See*
 18 *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d
 19 1258, 1261 (9th Cir. 1992)).

20 **III. Conclusion and Order**

21 Good cause appearing, **IT IS HEREBY ORDERED** that:

22 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (**ECF No.**
 23 **3**) is **GRANTED**.

24 2. The Secretary of the CDCR, or his designee, shall collect from Plaintiff’s
 25 prison trust account the \$350 filing fee owed in this case by collecting monthly payments
 26 from the account in an amount equal to twenty percent (20%) of the preceding month’s
 27 income and forward payments to the Clerk of the Court each time the amount in the

1 account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
2 SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED
3 TO THIS ACTION.

4 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey A.
5 Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
6 942883, Sacramento, California, 94283-0001.

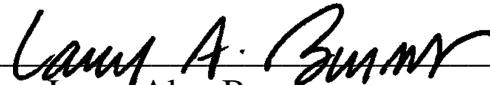
7 **IT IS FURTHER ORDERED** that:

8 4. Plaintiff's Complaint is **DISMISSED** for failing to state a claim upon which
9 relief may be granted and for seeking monetary damages against immune defendants
10 pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). However, the Court GRANTS
11 Plaintiff 45 days leave in which to re-open his case by filing an Amended Complaint
12 which cures all the deficiencies of pleading noted above. Plaintiff's Amended Complaint
13 must be complete by itself without reference to his original complaint. *See S.D. CAL.*
14 *CivLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546
15 (9th Cir. 1989) ("[A]n amended pleading supersedes the original."); *Lacey v. Maricopa*
16 *Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with leave to
17 amend which are not re-alleged in an amended pleading may be "considered waived if
18 not replied.").

19 If Plaintiff fails to file an Amended Complaint within the time provided, this civil
20 action will remain dismissed without prejudice based on Plaintiff's failure to state a claim
21 upon which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and
22 § 1915A(b)(1).

23 5. The Clerk of Court is directed to mail Plaintiff a copy of a court approved
24 civil rights complaint form.

25 DATED: October 6, 2015


Hon. Larry Alan Burns
United States District Judge